

FILED

AUG 30 2007

**IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF WEST VIRGINIA**

**U.S. DISTRICT COURT
CLARKSBURG, WV 26301**

DAVID JOSEPH LECHIARA,

Petitioner,

v.

**Civil Action No. 1:07cv14
Criminal Action No. 1:05cr39(1)
(Judge Keeley)**

UNITED STATES OF AMERICA,

Respondent.

ORDER ON PETITIONER'S PENDING MOTIONS

The *pro se* petitioner initiated this § 2255 action on February 2, 2007. The respondent filed a response on July 6, 2007.¹ In the response, the respondent asserts that the petition is due to be dismissed because the petitioner waived his right to appeal his sentence in the plea agreement. The respondent further asserts that the petitioner's claims lack merit. This case is before the Court on the petitioner's motion for discovery, and motion to compel and for an extension of time.

In the motions, the petitioner asserts that the government's response relies upon the following documents: (1) the waiver contained in the plea agreement; (2) the petitioner's plea hearing transcripts; (3) the petitioner's sentencing transcripts; and (4) the petitioner's Waiver of Indictment. The petitioner asserts, however, that he does not have those documents in his possession, that he did not receive a copy of those documents from the respondent, and that cannot afford to obtain copies of those documents on his own. Moreover, the petitioner asserts that he cannot properly reply to the respondent's argument without copies of those documents and seeks the Court's assistance in

¹ The respondent was granted two extensions of time.

obtaining them. The petitioner asserts that he has requested such documents from the government, but that he has failed to receive a response. Finally, the petitioner asserts that he will need an additional sixty (60) days from the date he receives the documents to formulate an appropriate response.

Upon a review of the record, the undersigned finds that the information the petitioner seeks in his motion for discovery is not truly “discovery,” as those records are available from the Court Reporter and the Court’s docket. It is therefore unnecessary for the Court to compel the respondents to provide those documents to the petitioner. Accordingly, the petitioner’s Motion for Discovery (dckt. 13/92) is **DENIED**, as is his Motion to Compel (dckt. 14/93).

Nonetheless, the Court is of the opinion that the petitioner is entitled to review the documents that the respondent has relied on to support its case. Accordingly, the Clerk is **DIRECTED** to send the petitioner copies his plea agreement (crim. dckt. 6), plea hearing transcripts (crim. dckt. 88), sentencing transcripts (crim. dckt. 88), and Waiver of Indictment (crim. dckt. 5). The costs of copying those documents shall be waived.

Moreover, recognizing the petitioner’s *pro se* status, the undersigned finds that his request for additional time is reasonable. Accordingly, the petitioner’s Motion for an Extension of Time (dckt. 14/93) is **GRANTED**. The petitioner shall have **sixty (60) days** from the date of this Order in which file his reply to the respondent’s response.

IT IS SO ORDERED.

The Clerk is directed to send a copy of this Order to the *pro se* petitioner by certified mail, return receipt requested, to his last known address as shown on the docket. The Clerk is further directed to provide copies of this Order to counsel of record, as applicable, as provided in the

Administrative Procedures for Electronic Case Filing in the United States District Court for the
Northern District of West Virginia.

DATED: August 29, 2007.



JOHN S. KAULL
UNITED STATES MAGISTRATE JUDGE